

THE STATE OF NEW HAMPSHIRE
SUPERIOR COURT

HILLSBOROUGH, SS.
Northern District
#07-S-0254

MARCH TERM, 2007

The State of New Hampshire

v.

Michael K. Addison

DEFENSE STRUCTURING CONFERENCE PROPOSAL

NOW COMES the Accused, represented by his Public Defenders, to propose the following dates and deadlines in this case:

1. Jury selection: September 2, 2008
2. Trial date: October 6, 2008
3. State's discovery deadline for investigative reports, interviews and lab reports in the State's possession and relating to the death of Officer Michael Briggs, and the State's notice of intent to seek death penalty:
May 7, 2007
4. Defense motions challenging the Death Penalty, the New Hampshire Capital Sentencing process, the Capital Sentencing statutes, aggravating factors, or other related motions:
August 30, 2007
5. State's responses to motions challenging the Death Penalty, the New Hampshire Capital Sentencing process, the Capital Sentencing statutes, aggravating factors, or other related motions:
October 19, 2007

6. Defense motions challenging the grand jury process or indictment, as well as seeking a change of venue:

October 26, 2007

7. Notice of Defenses

November 2, 2007

8. State's response to defense motions challenging grand jury process or indictment, or seeking a change of venue:

November 30, 2007

9. State's motions challenging sufficiency of defenses: December 7, 2007

10. State's disclosure of experts relating to forensic evidence: January 4, 2008

11. Defense's disclosure of experts relating to forensic evidence:

February 29, 2008

12. Defense motions to suppress statements or evidence: March 14, 2008

13. State's responses to defense's motions to suppress: April 18, 2008

14. Defense's disclosure of mental health or other experts, reserving to the defense the right to raise and litigate discovery requirements relating to the penalty phase:

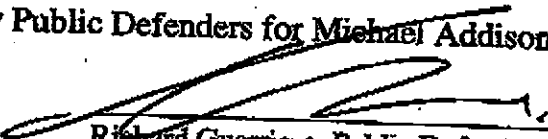
March 14, 2008

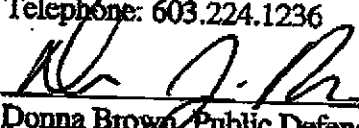
15. Defense's disclosure of discovery relating to mental health or other defenses, reserving to the defense the right to raise and litigate discovery requirements relating to the penalty phase:


March 14, 2008

16. State's disclosure of mental health or other experts: May 9, 2008
17. Motions relating to voir dire and jury instructions: June 1, 2008
18. Expert witness depositions: June 13, 2008
19. Lay witness depositions: June 13, 2008
20. Defense's disclosure of reciprocal discovery: June 16, 2008
21. Rule 404(b) and other evidentiary motions in limine: July 16, 2008
22. Responses to motions in limine: August 18, 2008

Respectfully submitted March 9, 2007, by Public Defenders for Michael Addison,


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THE STATE OF NEW HAMPSHIRE

SUPERIOR COURT

HILLSBOROUGH, NORTH, SS.

MARCH 2007

State of New Hampshire v. Michael Addison

No. 07-S-0254


REQUEST THAT ALL STATUS CONFERENCES AND HEARINGS OCCUR ON THE
RECORD AND WITH MR. ADDISON PRESENT


Michael K. Addison requests that all future status conferences and hearings in this case occur in open court, on the record, and in his presence. Specifically, Mr. Addison's request encompasses any pre-trial conferences the Court might otherwise conduct in chambers with only his and the State's counsel, any status conferences at which matters relating to scheduling, or to substantive issues, may be discussed, or any hearings, whether or not either side intends to call witnesses or make offers of proof.

In support of this request, he relies on his state and federal due process rights to be present at all stages of this proceeding. N.H. Const. pt. I, art. 15; U.S. Const. Amendments V, VI, XIV.

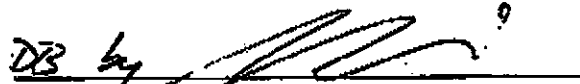
WHEREFORE, Mr. Addison respectfully requests that this Honorable Court grant this request.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Motion was forwarded on this 22nd day of March, 2007, to Attorney General Kelly Ayotte, Senior Assistant Attorney General Jeff Strelzin, Senior Assistant Attorney General Will Delker and Assistant Attorney General Karen Huntress, at the Office of the New Hampshire Attorney General.



David Rothstein, Public Defender

THE STATE OF NEW HAMPSHIRE

SUPERIOR COURT

HILLSBOROUGH, NORTH, SS.

MARCH, 2007

State of New Hampshire v. Michael Addison

No. 07-S-0254

DEFENSE COUNSEL'S OBJECTION TO DEADLINES
FOR DEATH PENALTY AND GRAND JURY MOTIONS

Defense counsel objects to the deadlines the Court set in its March 13, 2007 scheduling order, to the extent it requires them to file all of their motions relating to the grand jury process and indictment by May 7, 2007, and all of the motions relating to the constitutionality of the Death Penalty by July 9, 2007.

These deadlines do not give counsel adequate time to research, draft, finalize and file motions that, almost uniformly, deal with issues of first impression in this state, and a complex body of jurisprudence in federal and other state courts. Moreover, they do not give counsel adequate time to analyze the legal issues in light of the State's evidence against the defendant, since even open-file discovery in the Capital Murder case is, as of this date, largely incomplete, and is not due until May 7. Finally, the deadlines do not give counsel an adequate opportunity to secure experts, or statistical information, to support his legal arguments.

In sum, if these deadlines stay in place, defense counsel will not be able to make an adequate record before this Court, and potential reviewing courts, on issues that govern whether the State can ultimately execute him.

This objection is grounded in the defendant's rights to due process, a fair trial, and to effective assistance of counsel. N.H. Const. pt. I, art. 15; U.S. Const. Amends. V, VI, XIV.

As grounds, counsel state:

1. On or about February 20, 2007, a Hillsborough County (North) grand jury indicted Michael Addison on one count of Capital Murder. He was arraigned on February 27, 2007.
2. After the arraignment, the Court notified the parties that it planned to hold a scheduling conference on March 9, 2007, and asked counsel to propose realistic trial dates and motion deadlines.
3. Each side drafted a proposed scheduling order in anticipation of the March 9 conference. A copy of defense counsel's proposed order is attached to this pleading. Both before and at the status conference, the State indicated it did not materially disagree with defense counsel's proposal, but it wanted the grand jury/indictment challenges to be filed before the death penalty challenges.
4. On March 13, 2007, the Court issued its scheduling order, a copy of which is attached to this pleading. Defense counsel take issue with several aspects of the order, but for the present, intend to direct their arguments to two issues: the deadlines and hearing dates regarding the grand jury/indictment and death penalty motions.

Grand Jury/Indictment Motions

5. Based on the Court's scheduling order, defense motions challenging the grand jury process or indictment are due May 7, 2007, the State's objections are due May 25, 2007, and the Court set a hearing date on June 7, 2007. Defense counsel need the time they requested in the proposed scheduling order. Counsel further submits that it is unrealistic to hold a hearing on the ninth business day after the State files its objections, since that

will not give the Defense adequate time before the hearing to reply to the State's arguments and prepare for the hearing.

6. Counsel intend to re-file the grand jury and indictment motions that they filed before the defendant was indicted. Under separate cover, they are filing a motion, pursuant to Supreme Court Rule 52(6), to obtain access to transcripts of proceedings before the grand jury, as these transcripts may enlighten the issues the defense has already raised, or present new issues. The State's statutorily-mandated death penalty notice and notice of non-statutory aggravating factors are not due until May 7, thus, the Defense cannot incorporate specific objections to these indictment-related features of the process under the present scheduling order. The State's discovery deadline is not until May 7, so the Defense cannot incorporate a full and careful analysis of those materials in crafting the grand jury process and indictment challenges. Finally, the Defense represents that it intends to mount broad-based challenges to the grand jury process that will take every bit of the time counsel sought in their proposed scheduling order – challenges counsel would be willing to explain to the Court, at this juncture, in camera.

7. The time counsel requested is essential if they are to be able to fully and completely research, and articulate, highly sophisticated challenges. It is essential because the Defense needs to review information that the State need not even provide until the date the motions are due. Since the trial date is 18 months off, the proposed deadlines defense counsel set forth will not delay the trial, or prejudice the State's ability to re-indict in the event this Court finds a flaw in the indictment or grand jury process. Accordingly, defense counsel request that the Court adopt the deadlines set forth in the scheduling order proposed by the Defense.

Death Penalty Motions

8. Based on the Court's scheduling order, motions challenging the constitutionality of the death penalty, the New Hampshire statute, or "any other related or dispositive motions" are due July 9, 2007. The State's objections are due July 27, 2007, and the Court set a hearing date on August 9, 2007. Defense counsel need the time they requested in their proposed scheduling order. Counsel further submit that it is unrealistic to hold a hearing on the ninth business day after the State's objections are due, since that will not give counsel adequate time before the hearing to reply to the State's objections and prepare for the hearing. Moreover, counsel submit that the hearing on these motions will take more than the one day the Court has allotted.¹

9. In this series of motions, the defendant intends to pursue all of the questions that were left unanswered in the Perry case, including whether the New Hampshire Death Penalty and New Hampshire Capital Murder procedures are unconstitutional under the state or federal constitutions; whether the Death Penalty in New Hampshire is unconstitutional because it denies the accused the right to choose between a judge and jury; whether it is unconstitutional because it does not permit consideration of residual doubt; whether it is unconstitutional because it excludes mitigating factors not proven by a preponderance of the evidence; whether it is unconstitutional because it fails to include a standard for the jury to employ in weighing aggravating and mitigating factors; and whether it is unconstitutional because it does not require the jury to impose a life sentence if the State has not carried its burden to prove Death Penalty factors beyond a reasonable doubt.

¹This is potentially an issue with the grand jury/indictment motions, and is almost definitely an issue with the suppression motions. Counsel will address these issues more particularly as the grand jury motions develop, and as discovery is completed sufficiently that he can identify and investigate suppression issues.

10. In addition, defense counsel intend to argue in this case, as counsel argued in Perry, that the defendant is entitled to a "trifurcated trial," in which a jury would separately consider innocence or guilt, and then, purposefulness, and then other aggravating and mitigating factors.

11. Further, defense counsel also intend to argue, as counsel did in Perry, that the death penalty is unconstitutional because lethal injection and hanging constitute "cruel and unusual punishment" under the federal constitution, and are inconsistent with the "true design of all punishments" clause of the New Hampshire Constitution. This issue has caused the governors of many states, including Florida, to stop executing people until it can be adequately studied and remedied. Florida's action derived from a case in which it took the State 34 minutes to kill a man by lethal injection. It has drawn national attention to the fact that states do not employ doctors to administer the drugs that execute people, do not have clearly defined protocols or procedures, and do not cause deaths that are "quick" and "painless." On information and belief, New Hampshire's procedures, if they exist at all, are no more refined than those of Florida or any other state. Counsel intend to argue that if the State wishes to execute Michael Addison, and its means for so doing fail to meet constitutional norms, he cannot be executed. The defendant anticipates that this challenge will involve not only the submission of lengthy pleadings and research, but testimony by out-of-state experts. There is no way this motion will be ready for a July 9 filing date, or a hearing a month later.

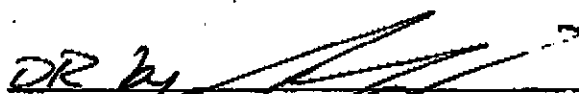
12. In addition to the Perry series of motions, counsel have outlined at least sixteen other challenges to the Death Penalty in general, or the New Hampshire statute. These motions are anything but perfunctory. In combination with the other motions, and all else this case involves, counsel will need all summer, as they initially requested, to research, write and file these motions. Since the trial date is 18 months off, the State will not be prejudiced if counsel need

additional time to complete the motions, and this Court will have ample time to rule on them. Accordingly, defense counsel respectfully request that the Court adopt the deadlines they set forth in the proposed scheduling order.

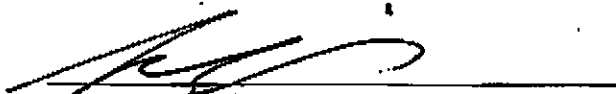
WHEREFORE, defense counsel respectfully requests that this Honorable Court:

- a. Vacate the May 7 and July 9 deadlines in its existing scheduling order;
- b. Vacate the associated response deadlines and hearing dates; and
- c. Adopt the deadlines for grand jury and death penalty motions set forth in their proposed scheduling order.

Respectfully submitted,



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David Rothstein, Public Defender

STATE OF NEW HAMPSHIRE

HILLSBOROUGH, SS.
NORTHERN DISTRICT

SUPERIOR COURT

State of New Hampshire

v.

Michael Addison

Docket No.: 07-S-0254

ORDER

Trial Date

September 2, 2008: Jury Selection with trial to begin immediately after the jury is selected

Motions Deadlines

March 19, 2007: State's motion to try other pending cases against the defendant before the capital murder case.

March 29, 2007: Defendant's response

April 5, 2007: Hearing

May 7, 2007: Defendant's motions challenging grand jury process or indictment

May 25, 2007: State's responses

June 7, 2007: Hearing

July 9, 2007: Defendant's motions to dismiss, motions challenging constitutionality of death penalty statute, motions challenging aggravating factors; and any other related or dispositive motions

July 27, 2007: State's responses

August 9, 2007: Hearing

June 2, 2008: Depositions of lay witnesses

June 16, 2008: Defendant's disclosure of reciprocal discovery

Notices

May 7, 2007: State's notice of intent to seek death penalty

September 3, 2007: Defendant's notice of defenses

**Proposed Jury Instructions
and Voir Dire**

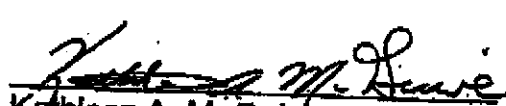
July 7, 2008: The State and defendant shall provide proposed jury instructions for both guilt and sentencing phases of trial and proposed voir dire questions for jury.

The Court does not generally entertain motions filed *ex parte* except for extraordinary circumstances. The Court also discourages the parties from filing motions under seal as such filings are inconsistent with the right of the public access to court proceedings. If motions are filed under seal, they are subject to unsealing by the Court, after hearing.

SO ORDERED.

Date

3/13/07


Kathleen A. McGuire
Presiding Justice

June 2, 2008: Depositions of lay witnesses

June 16, 2008: Defendant's disclosure of reciprocal discovery

Notices

May 7, 2007: State's notice of intent to seek death penalty

September 3, 2007: Defendant's notice of defenses

**Proposed Jury Instructions
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SO ORDERED.

Date

3/13/07


Kathleen A. McGuire
Presiding Justice

THE STATE OF NEW HAMPSHIRE
SUPERIOR COURT

HILLSBOROUGH, NORTH, SS.

MARCH 2007

State of New Hampshire v. Michael Addison

No. 07-S-0254

MOTION TO CHANGE THE LOCATION OF PRETRIAL HEARINGS

The Accused, Michael Addison, through his Public Defenders, respectfully requests that the Court change the location of all pretrial hearings. Specifically, the Defense requests that all pretrial hearings be held at a courthouse which has a sally port or other similar facility. A sally port is necessary to guard against repeated photographing of Michael Addison while he is shackled and in prison clothes. Our constitution presumes that Michael Addison is innocent and it guarantees him the right to a trial before impartial jurors. Repeated publication of photographs of Michael Addison in shackles and a prison uniform threatens those constitutional rights. To insure that such constitutional violations do not occur the Court should grant the relief requested in this motion.

FACTS AND PROCEDURAL CONTEXT

1. The prosecution accuses Michael Addison of Capital Murder of Manchester Police Officer Michael Briggs. The indictment sets forth aggravating factors which are clearly intended as precedent to a Notice of Intent to Seek the Death Penalty.

2. The Attorney General, Kelly Ayotte, has publicly declared the State's intent seek the Death Penalty.

3. Every proceeding and significant event in this case has received extensive media coverage.¹

4. The formal arraignment on February 27, 2007, was held at the Hillsborough County Superior Court building in Manchester. In light of the media coverage, the Court's earlier media order and Superior Court Rule 78, the Defense was aware that the arraignment would result in photographs and video of Michael Addison's appearance in court.

5. For this reason, the undersigned Public Defenders were concerned about Michael Addison's clothing and physical appearance. Specifically, counsel feared (and still fear) that images of Michael Addison shackled and in prison clothes would publicly portray him as guilty or as deserving of the Death Penalty.

6. In light of these concerns, the undersigned Public Defenders made extensive arrangements regarding Michael Addison's clothing and physical appearance. The undersigned (Guerriero) spoke at length with Warden Richard Gerry of the New Hampshire State Prison, Sheriff James Hardy of Hillsborough County and various staff members of both the New Hampshire State Prison and the Sheriff's Office. Although mindful of security and their procedures in "normal" cases, both Warden Gerry and Sheriff Hardy were cooperative in allowing the Defense to provide Michael Addison with appropriate clothing for his court appearance.

¹ In previous filings with the Court, the defense documented the extensive publicity in the first month after the death of Officer Briggs. That compilation of news stories is incorporated by reference. The Defense also directs the Court to the Manchester Union Leader which has set up a special web page compiling many of its stories on this case. Online at <http://www.unionleader.com/channel.aspx/News?channel=2af17ff4-f73b-4c44-9f51-092e828e1131>. Similarly, WMUR-TV has frequently posted compilations links to its video coverage of this case. Online at <http://www.wmur.com/news/11126860/detail.html>. Additional evidence may be offered at the hearing on this motion.

7. The arraignment, an important but brief formality, was recorded and replayed in its entirety on WMUR-TV – Channel 9 in Manchester.

8. The photographs and broadcast from within the courtroom showed Michael Addison in appropriate clothing for court, standing with his attorneys. No restraints or shackles are visible. Below is an example of the type of images broadcast from the courtroom.



9. However, after the arraignment was over, Michael Addison was photographed leaving the courthouse. In that photograph, he looked like this:



On information and belief, this photograph was taken at the back exit of the court house as Michael Addison was being transported back to prison. Michael Addison is obviously bound at his wrists and clothed in a prison uniform. The photograph was printed on the front page of the Manchester Union Leader. See attachment.

10. As long as the Court continues to hold hearings in Manchester there is nothing to prevent similar photographs from being taken and published in the future. As far as the Defense is aware, there is no sally port or other similar receiving facility at the Hillsborough County Superior Court building in Manchester. The officers transporting a person to and from the building have no choice other than to pass through an area where the accused is visible to the public.

11. There are other Superior Court buildings which do not present the same problem.

12. Hillsborough County Superior Court in Nashua has a sally port. That Superior Court building is only a short distance from Manchester and is still within Hillsborough County.

13. Rockingham County Superior Court also has a sally port.

LAW AND ARGUMENT

14. An accused person is presumed to be innocent and has the right to be tried before impartial jurors. N.H. Const. part 1, arts. 15 and 35; U.S. Const. Amds. VI and XIV. Similarly, constitutional law and our Capital Murder sentencing procedures begin with a presumption that the Death Penalty should not be imposed. N.H. Const. part 1, arts. 15 - 18, 33; U.S. Const. Amds. VI, VIII and XIV; RSA 630:5. All of these rights will be in jeopardy if the Court continues to conduct hearings in the Hillsborough County Superior Court in Manchester.

15. Considering the nature of the charge in this case and the overwhelming media coverage, there is little doubt that many potential jurors have seen and will continue to see news stories about the case. In reading the newspaper, watching TV or viewing news online, such potential jurors are exposed to images of Michael Addison. If Michael Addison is visible in a public area in prison clothes, with his hands and feet bound, that image will be preserved by the media and publicly broadcast to potential jurors in the community.

16. The United States Supreme Court has considered the effect on jurors when they see a defendant in prison clothing or bound.

The potential effects of presenting an accused before the jury in prison attire need not, however, be measured in the abstract. Courts have, with few exceptions, determined that an accused should not be compelled to go to trial in prison or jail clothing because of the possible impairment of the presumption so basic to the adversary system. . . . This is a recognition that the constant reminder of the accused's condition implicit in such distinctive, identifiable attire may affect a juror's judgment. The defendant's clothing is so likely to be a continuing influence throughout the trial that, not unlike placing a jury in the custody of deputy sheriffs who were also witnesses for the prosecution, an unacceptable risk is presented of impermissible factors coming into play.

[C]ompelling an accused to wear jail clothing furthers no essential state policy. That it may be more convenient for jail administrators, a factor quite unlike the substantial need to impose physical restraints upon contumacious defendants, provides no justification for the practice . .

Estelle v. Williams, 425 U.S. 501, 506 (1976) (citations omitted). See also Deck v. Missouri, 544 U.S. 622 (2005); Moore v. Ponte, 186 F. 3d 26, 35 (1999).

17. Although Estelle v. Williams involved jurors viewing a defendant in court clothes during his actual trial, the principles set forth in that case are equally applicable in a highly publicized case where potential jurors are likely to have seen the accused in news media accounts aired before the trial. The constitutional principles at stake are the same:

The right to a fair trial is a fundamental liberty secured by the Fourteenth Amendment. Drope v. Missouri, 420 U.S. 162, 172 (1975). The presumption of innocence, although not articulated in the Constitution, is a basic component of a fair trial under our system of criminal justice. Long ago this Court stated:

"The principle that there is a presumption of innocence in favor of the accused is the undoubted law, axiomatic and elementary, and its enforcement lies at the foundation of the administration of our criminal law." Coffin v. United States, 156 U.S. 432, 453 (1895).

To implement the presumption, courts must be alert to factors that may undermine the fairness of the factfinding process. In the administration of criminal justice, courts must carefully guard against dilution of the principle that guilt is to be established by probative evidence and beyond a reasonable doubt. In re Winship, 397 U.S. 358, 364 (1970).

The actual impact of a particular practice on the judgment of jurors cannot always be fully determined. But this Court has left no doubt that the probability of deleterious effects on fundamental rights calls for close judicial scrutiny. Estes v. Texas, 381 U.S. 532 (1965); In re Murchison, 349 U.S. 133 (1955). Courts must do the best they can to evaluate the likely effects of a particular procedure, based on reason, principle, and common human experience.

Estelle v. Williams, *supra*, 425 U.S. at 504.

18. This case calls for the "close judicial scrutiny" recommended in Estelle v. Williams. The stakes could not be higher. There is no other criminal case in New Hampshire where the Death Penalty is being sought. There is no other criminal case receiving greater media coverage. There is no other criminal case receiving more attention from the Manchester community. Under these circumstances, the repeated publication of images of Michael Addison in prison clothes, bound hand and foot, will serve as a "constant reminder" and a "continuing influence" which will undermine the presumption of innocence before the trial has even started.


19. It is true that the news media have already recorded images of Michael Addison while he was bound and in prison clothes. It is also true that the media may choose to republish those images. Notwithstanding those circumstances, the Court should not abandon attempts to limit unfair prejudice against Michael Addison. Rather, the Court should act to prevent the creation of new images which might have an unfairly prejudicial effect.


20. There is a simple solution to this problem. Both the Rockingham County Superior Court and the Hillsborough County Superior Court in Nashua are equipped with sally ports. If hearings were held in either of those locations, Michael Addison would be removed from the transport vehicles while in a secure area not visible to the public. Images such as the one published after the arraignment would not exist.


WHEREFORE, the defendant respectfully requests the following relief:

- I. A hearing on this motion;
- II. An order from the Court that all future pretrial hearings will be conducted at either Superior Court in Nashua or Superior Court in Rockingham County; and
- III. An order from the Court that during transport, all Sheriff's, corrections and law enforcement personnel shall make all reasonable efforts to assure that Michael Addison is not visible to the public while clothed in prison attire or while shackled.

Respectfully submitted,


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NEW HAMPSHIRE UNION LEADER

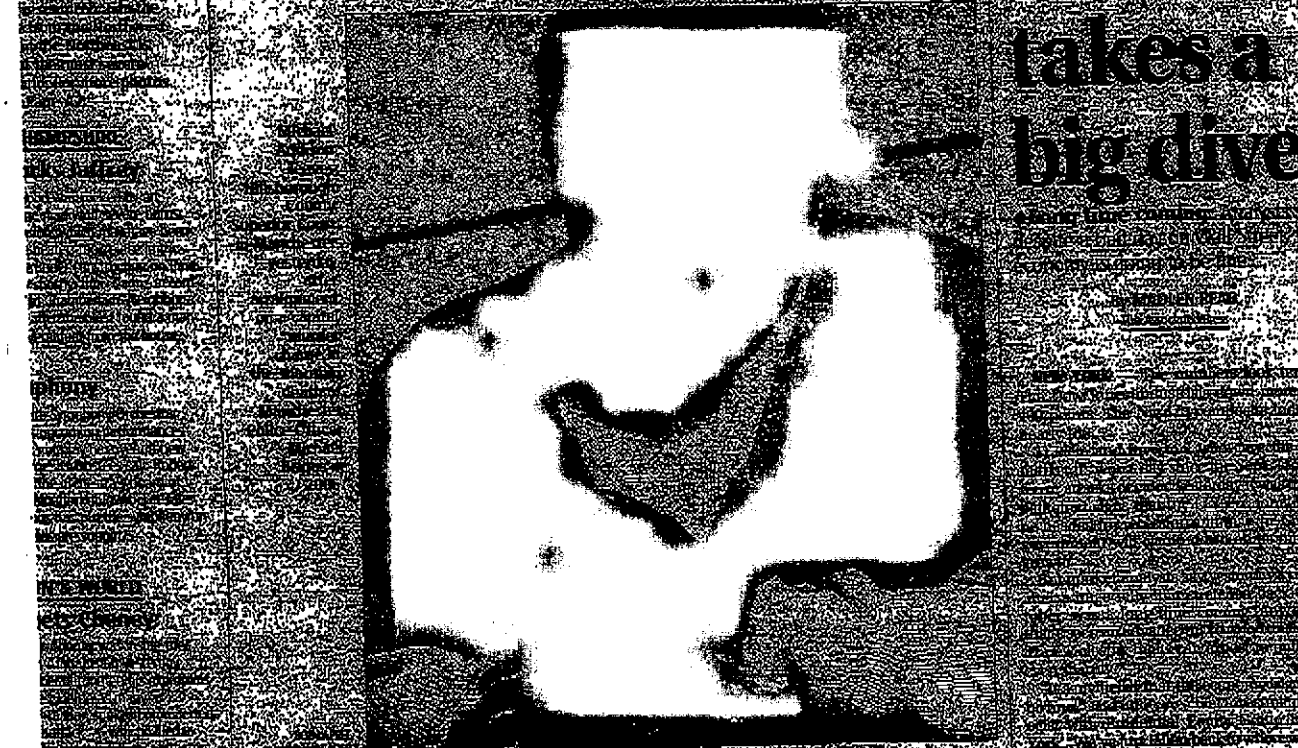
ay No one charged in botched river rescue

ATTEMPTS TO RESCUE A BOAT CAPSIZED IN THE RIVER WEDNESDAY WERE BOTCHED, AND NO ONE WAS CHARGED IN THE INCIDENT, A POLICE SPOKESMAN SAID.

The rescue attempt was made by a group of volunteers who were alerted to the problem by a local resident. The group was unable to locate the boat, and the rescue attempt was abandoned.

The police spokesman said that the incident was not a crime, and that no one was charged. He said that the group was not trained, and that the rescue attempt was a mistake.

Capital Murder Charge Market takes a big dive



Plea: Not guilty